

**TITLE 13**

**PROPERTY MAINTENANCE REGULATIONS<sup>1</sup>**

**CHAPTER**

1. MISCELLANEOUS.
2. JUNK.
3. SUBSTANDARD PROPERTY REMOVAL.
4. LAKELAND TREE MANAGEMENT ORDINANCE.

**CHAPTER 1**

**MISCELLANEOUS**

**SECTION**

- 13-101. Health officer.
- 13-102. Smoke, soot, cinders, etc.
- 13-103. Stagnant water.
- 13-104. Weeds.
- 13-105. Dead animals.
- 13-106. Health and sanitation nuisances.
- 13-107. Inoperative vehicles on or adjacent to residential property.
- 13-108. Overgrown and dirty lots.
- 13-109. Accumulation and/or storage of loose branches, limbs and yard waste.

**13-101. Health officer.** The "health officer" shall be such municipal, county, or state officer as the board of commissioners shall appoint or designate to administer and enforce health and sanitation regulations within the city. (1989 Code, § 8-101)

**13-102. Smoke, soot, cinders, etc.** It shall be unlawful for any person to permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gases as to be detrimental to or to endanger the health, comfort, and safety of the public or so as to cause or have a tendency to cause injury or damage to property or business. (1989 Code, § 8-103)

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<sup>1</sup>Municipal code references

Animal control: title 10.

Fee schedule; tree removal, etc.: appendix A.

Littering streets, etc.: § 16-105.

Toilet facilities in beer places: § 8-211(11).

**13-103. Stagnant water.** It shall be unlawful for any person knowingly to allow any pool of stagnant water to accumulate and stand on his property without treating it so as effectively to prevent the breeding of mosquitoes. (1989 Code, § 8-104)

**13-104. Weeds.** Every owner or tenant of property shall periodically cut the grass and noxious weeds on his or her property. It shall be unlawful for any person to fail to comply with an order by the City of Lakeland or his or her designee to cut such vegetation when it has reached a height of one foot (1') if located in an undeveloped area, or a height of one-half foot (1/2') if located within a developed area, except for those parcels containing five (5) acres or more land area. A developed area shall refer to a platted subdivision or lot of record, areas intended to be left in a natural state such as, conservation easement and natural areas, shall be exempt from these provisions. (1989 Code, § 8-105, modified, as amended by Ord. #06-92, July 2006)

**13-105. Dead animals.** Any person owning or having possession of any dead animal not intended for use as food shall promptly notify the health officer and dispose of such animal in such manner as the health officer shall direct. (1989 Code, § 8-106)

**13-106. Health and sanitation nuisances.** It shall be unlawful for any person to permit any premises owned, occupied, or controlled by him to become or remain in a filthy condition, or permit the use or occupation of same in such a manner as to create noxious or offensive smells and odors in connection therewith, or to allow the accumulation or creation of unwholesome and offensive matter or the breeding of flies, rodents, or other vermin on the premises to the menace of the public health or the annoyance of people residing within the vicinity. (1989 Code, § 8-107)

**13-107. Inoperative vehicles on or adjacent to residential property.**<sup>1</sup> It shall be unlawful for the owner or person in control of any residential lot in the city to keep any inoperative motor vehicle on the lot or on any street adjacent to the lot for more than seventy-two (72) hours unless the vehicle is completely enclosed within a building. (1989 Code, § 8-108)

**13-108. Overgrown and dirty lots.** (1) Prohibition. Pursuant to the authority granted to municipalities under Tennessee Code Annotated, § 6-54-113, it shall be unlawful for any owner of record of real property to create, maintain or permit to be maintained on such property the growth of trees, vines, grass, underbrush and/or the accumulations of debris, trash, litter or garbage or any combination of the preceding elements, so as to endanger the health, safety or welfare of other citizens or to encourage the infestation of rats and other harmful animals.

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<sup>1</sup>Municipal Code references

Parking/storage of recreational vehicles and equipment: § 15-609.

(2) Limitation on application. The provisions of this section shall not apply to any parcel of property upon which an owner-occupied residence is located.

(3) Designation of public officer or department. The city manager shall designate an appropriate department or person to enforce the provisions of this section.

(4) Notice to property owner. It shall be the duty of the department or person designated to enforce this section to serve notice upon the owner of record in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified United States Mail, addressed to the last known address of record. The notice shall state that the owner of the property is entitled to a hearing, and shall at the minimum, contain the following additional information:

(a) A brief statement that the owner is in violation of the Lakeland Municipal Code, which has been enacted under the authority of Tennessee Code Annotated, § 6-54-113, and that the property of such owner may be cleaned up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;

(b) The person, office, address, and telephone number of the department or person giving the notice;

(c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and

(d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.

(5) Clean-up at property owner's expense. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (or twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the department or person designated to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. Upon the filing of the notice with the office of the register of deeds in Shelby County, the costs shall be a lien on the property in favor of the municipality, second only to liens of the state, county, and municipality for taxes, any lien of municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These costs shall be placed on the tax rolls of the municipality as a lien and shall be added to property tax bills to be collected at

the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes.

(6) Appeal. The owner of record who is aggrieved by the determination and order of the public officer may appeal the determination and order to the Lakeland Board of Commissioners. The appeal shall be filed with the city recorder within ten (10) days following the receipt of the notice issued pursuant to subsection (4) above. The failure to appeal within this time shall, without exception, constitute a waiver of the right to a hearing.

(7) Judicial review. Any person aggrieved by an order or act of the Lakeland Board of Commissioners under subsection (5) above may seek judicial review of the order or act.

(8) Supplemental nature of this section. The provisions of this section are in addition and supplemental to, and not in substitution for any other provisions in the municipal charter, this municipal code of ordinances or other applicable law which permits the city to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of trees, vines, grass, weeds, underbrush and/or the accumulation of the debris, trash, litter, or garbage or any combination of the preceding elements, under its charter, any other provisions of this municipal code of ordinances or any other applicable law. (as added by Ord. #02-11, Aug. 2002)

**13-109. Accumulation and/or storage of loose branches, limbs and yard waste**. (1) It shall be unlawful for any property owner or resident to accumulate and/or store loose limbs, branches, and other such yard waste in front setback areas of residentially zoned property within the city limits of the City of Lakeland for periods of time exceeding seven (7) days.

(2) Any parcel zoned AG (agricultural) shall be exempt from the requirements of this section if the parcel is being employed primarily for the purpose of providing agricultural services, including, but not limited to forestry, cultivating or producing crops, and raising livestock. AG (agricultural) zoned parcels which are employed primarily for a non-agricultural use shall comply with this section.

(3) The provisions of this section may be waived in writing by the city manager in the event of severe storms or other acts of God whereby loose limbs, branches and other such yard waste may be generated in such quantities that timely disposal is practically inhibited.

(4) The provisions of this section are severable. If any provision of this section or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application.

(5) Any person, firm or corporation violating any provision of this section shall be fined not less than fifty dollars (\$50.00) for each offense, and a separate and continuing offense shall be deemed committed for each day said violation continues.

(6) The ordinance comprising this section shall take effect fifteen (15) days after its final passage and publication, the public welfare requiring it. (as added by Ord. #10-151, Aug. 2010)

**CHAPTER 2****JUNK****SECTION**

13-201. Definitions.

13-202. Junk prohibited.

13-203. Junkyards prohibited.

**13-201. Definitions.** (1) "Junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, trucks, vehicles of all kinds, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) "Junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, used auto parts yards, yards providing temporary storage of automobile bodies or parts awaiting disposal as a normal part of the business operation when the business will continually have like materials located on the premises, garbage dumps, sanitary landfills, and recycling centers. (1989 Code, § 8-401, modified)

**13-202. Junk prohibited.** The accumulation of junk within the city is prohibited.

**13-203. Junkyards prohibited.** Junkyards are prohibited within the City of Lakeland.

## CHAPTER 3

### SUBSTANDARD PROPERTY REMOVAL

#### SECTION

- 13-301. Findings of board.
- 13-302. Definitions
- 13-303. Public officer; designated powers.
- 13-304. Initiation of proceedings; hearings.
- 13-305. Orders to owners of unfit structures.
- 13-306. When public officer may repair, etc.
- 13-307. When public authority or officer may remove or demolish.
- 13-308. Lien for expenses; sale of salvaged materials; other powers not limited.
- 13-309. Basis for a finding of unfitness.
- 13-310. Service of complaints or orders.
- 13-311. Enjoining enforcement of order.
- 13-312. Additional powers of public officer.
- 13-313. Powers conferred are supplemental.

**13-301. Findings of board.** Pursuant to Tennessee Code Annotated, § 13-21-101 et seq., the board of commissioners finds that there may now or in the future exist in the city structures which are unfit for human occupation or use due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such structures unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city and, therefore, ordains as follows. (1989 Code, § 4-501)

**13-302. Definitions.** For purposes of this chapter, the following terms, phrases, words, and their derivation shall have the meaning given herein:

(1) "Municipality." The City of Lakeland, Tennessee, and the areas encompassed within existing city limits or as hereafter annexed.

(2) "Governing body." The board of commissioners.

(3) "Public officer." The officer or officers who are authorized by this chapter to exercise the powers prescribed herein and pursuant to Tennessee Code Annotated, § 13-21-101, et seq.

(4) "Public authority." A duly appointed commission, authority or officer of the governing body of the city, county or state charged with responsibilities relating to health, fire, building regulations, demolition or other activities concerning structures in the city.

(5) "Owner." The holder of title in fee simple and every mortgage of record.

(6) "Parties in interest." All individuals, associations, corporations and other who have interests of record in a dwelling and any who are in possession thereof.

(7) "Structures." Any building or structure, or part thereof, used for human occupation or use, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. (1989 Code, § 4-502)

**13-303. Public officer; designated powers.** There is hereby designated and appointed a public officer, to be the city manager to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the city manager. (1989 Code, § 4-503, modified)

**13-304. Initiation of proceedings; hearings.** Whenever a petition is filed with the public officer or by at least five (5) residents of the city charging that any structure is unfit for human occupancy or use, or whenever it appears to the public office (on his own motion) that any structure is unfit for human occupation or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and parties in interest of, such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the service of the complaint; and the owner and parties and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint; and the rules of evidence prevailing in court of law or equity shall not be controlling in hearings before the public officer. (1989 Code, § 4-504)

**13-305. Orders to owners of unfit structures.** If, after such notice and hearing as provided for in the preceding section, the public officer determines that the structure under consideration is unfit for human occupancy or use, he shall state in writing his finding of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

(1) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (not exceeding fifty percent [50%] of the reasonable value), requiring the owner, during the time specified in the order, to repair, alter, or improve such structure to render it unfit for human occupancy or use or to vacate and close the structure for human occupancy or use; or

(2) If the repair, alteration or improvement of said structure cannot be made at a reasonable cost in relation to the value of the structure (not to exceed fifty percent [50%] of the value of the premises), requiring the owner within the

time specified in the order, to remove or demolish such structure. (1989 Code, § 4-505)

**13-306. When public officer may repair, etc.** If the owner fails to comply with the order to repair, alter, or improve or to vacate and close the structure as specified in the preceding section hereof, the public officer may cause such structure to be repaired, altered, or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human occupancy or use; the use or occupation of this building for human occupancy or use is prohibited and unlawful." (1989 Code, § 4-506)

**13-307. When public authority or officer may remove or demolish.** If the owner fails to comply with an order, as specified above, to remove or demolish the structure, the public officer may cause such structure to be removed and demolished. (1989 Code, § 4-507)

**13-308. Lien for expenses; sale of salvaged materials; other powers not limited.** The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public authority or officer shall be a lien against the real property upon which such costs were incurred. If the structure is removed or demolished by the public officer, he shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the chancery court the county, by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court, provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or as otherwise may be provided by the charter or ordinances of the city. (1989 Code, § 4-508)

**13-309. Basis for a finding of unfitness.** The public authority or officer defined herein shall have the power and may determine that a structure is unfit for human occupation and use if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants or users of such structure, the occupants or users of neighboring structure or other residents of the city; such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanness. (1989 Code, § 4-509)

**13-310. Service of complaints or orders.** Complaints or orders issued by the public officer pursuant to this chapter shall be served upon persons, either personally or by registered mail, but if the whereabouts of such person is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in a newspaper having general circulation in the city. In addition, a copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed for record in the register's office of the county, and such filing shall have the same force and effect as other lis pendens notices provided by law. (1989 Code, § 4-510)

**13-311. Enjoining enforcement of order.** Any person affected by an order issued by the public officer served pursuant to this chapter may file a suit in chancery court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon the filing of such suit, issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that within sixty (60) days after the posting and service of the order of the public officer, such person shall file such suit in the court.

The remedy provided herein shall be the exclusive remedy and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of noncompliance by such person with any order of the public officer. (1989 Code, § 4-511)

**13-312. Additional powers of public officer.** The public authority or officer, in order to carry out and effectuate the purposes and provisions of this chapter, shall have the following powers in addition to those otherwise granted herein:

- (1) To investigate conditions of the structures in the city in order to determine which structures therein are unfit for human occupation or use;
- (2) To administer oaths, affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examination, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter; and
- (5) To delegate any of his functions and powers under this chapter to such officers and agents as he may designate. (1989 Code, § 4-512)

**13-313. Powers conferred are supplemental.** This chapter shall not be construed to abrogate or impair the powers of the city with regard to the enforcement of the provisions of its charter or any other ordinance or regulations, nor to prevent or punish violations thereof, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by the charter and other laws. (1989 Code, § 4-513)

**CHAPTER 4****LAKELAND TREE MANAGEMENT ORDINANCE****SECTION**

- 13-401. Purpose.
- 13-402. Definitions.
- 13-403. Referenced standards.
- 13-404. Applicability.
- 13-405. Regulated activities.
- 13-406. Exemptions.
- 13-407. Agricultural uses/timber harvesting.
- 13-408. General criteria for the determination of specimen trees or standards of trees.
- 13-409. Minimum tree density requirements.
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- 13-411. Application requirements.
- 13-412. Tree survey.
- 13-413. Tree management plan.
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- 13-415. Inspection.
- 13-416. Permit procedures.
- 13-417. Removal of trees--conditions and exceptions.
- 13-418. Tree management during construction.
- 13-419. Tree damage.
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- 13-424. Municipal tree management.
- 13-425. Applicability.
- 13-426. Tree planting.
- 13-427. Tree maintenance.
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- 13-429. Qualifications of contract tree companies.
- 13-430. Trees of historic or special significance.
- 13-431. Official city tree.
- 13-432. Appeal.
- 13-433. Penalty.
- 13-434. Provisions for violation mitigation.
- 13-435. Delay or failure to enforce.
- 13-436. Interference with city natural resources board.
- 13-437. Severability.
- 13-438. Provisions of federal and state law excepted.

**13-401. Purpose.** The purposes of this ordinance are to:

(1) The purpose and intent of this ordinance is to promote the health, safety and public welfare of the inhabitants of and visitors to the City of Lakeland, and consistent with forestry policy and practice for urban areas promulgated by the state division of forestry, to provide a mechanism for the management of trees and other woody vegetation within the city. This chapter is based on the premise that trees are a part of our heritage and our future, and that they are an essential part of the quality of life within our city.

(2) The standards of this ordinance are hereby established in order to create greater human comfort by providing shade; to cool the air and otherwise temper the effects of summer heat; to restore oxygen to the atmosphere; to reduce glare and noise levels; to promote clean air quality by increasing dust filtration; to improve surface drainage and minimize flooding; to ensure that activities in one area do not adversely affect activities within adjacent areas; to emphasize the importance of trees as a visual screen; to beautify and enhance improved and undeveloped land; to maintain the ambiance of the city; and to ensure that tree removal does not unduly reduce property values, all of which aid in protecting the health, safety and general welfare of the city.

(3) The provisions of this ordinance are intended to provide standards for and promote the preservation of trees including but not limited to, during the land development process and during the construction process; preventing indiscriminate tree removal without mitigation provisions for preservation or replacement of trees on both private and public lands within the city.

(4) The policies of the city with respect to trees as contained in this ordinance, and which are expected to be furthered by the provisions of this ordinance, are deemed of significant importance; and, in considering applications relative to development of properties, the various boards and commissions of the city shall take such policy into consideration in all instances. (as added by Ord. #\_\_\_, Feb. 2001; amended by Ord. #02-15, Nov. 2002; and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-402. Definitions.** For purposes of this ordinance, the following definitions shall apply:

(1) "Applicable site." Land upon which a minimum tree density must be maintained, including but not limited to, land upon which a residential or commercial subdivision is being developed, a land disturbance permit is being implemented, or construction of a single-family and/or duplex residential dwelling is being undertaken including on existing lots of record. See § 13-409 for more details.

(2) "Arborist." The agent for the City of Lakeland primarily responsible for administering the provisions of this ordinance under the direction of the city manager.

(3) "Basal area." The cross-sectional area of a tree trunk at diameter breast height (dbh) expressed herein in terms of "units" per acre.

(4) "Buffer." A landscaped open space area and/or screen for buffering incompatible uses, as defined in the City of Lakeland Zoning Ordinance.

(5) "Caliper." A forest standard of tree trunk diameter measurement. For purposes of this ordinance, caliper shall be the standard diameter measurement of replacement trees and shall be taken at six (6) inches above the ground.

(6) "Canopy." The foliar cover in a forest stand consisting of overhead branches and leaves.

(7) "Density factor analysis." A method of converting the size (dbh or caliper) of any given tree to tree density units for purposes of determining whether a given site meets the minimum tree density unit requirements prescribed by this ordinance. (See Density Factor Analysis, Appendix A of this chapter)<sup>1</sup>

(a) Site Density Factor (SDF) = The minimum tree density required to be maintained on a developed site (20 units per acre).

(b) Existing Density Factor (EDF) = The density value of existing trees 6"dbh or greater to be preserved on a site.

(c) Replacement Density Factor (RDF) = The density of new trees to be planted on a site.

(d) Density Factor Deficiency (DFD) = the density unit value by which a site is deficient in its minimum required density, or  $DFD = SDF - EDF - RDF$

(e) Removal Impact Factor (RIF) = the density unit value used to determine the appropriate Tree Removal Impact Fee, or  $RIF = (PDD-16) - EDF - RDF$

(f) Pre-Development Density (PDD-16) = the total density unit value of trees with 16" dbh and greater located on a site prior to development or prior to tree removal associated with any of the regulated activities as listed in § 13-405 to be used in determining the appropriate removal impact factor.

(8) "Development approval." For the purposes of this ordinance, an official authorization issued by the municipal planning commission and/or board of commissioners, including, but not limited to, approvals of subdivisions, planned residential developments, commercial developments, and planned commercial developments.

(9) "Diameter breast height (dbh)." The standard measure of tree size for those trees existing on a site that are at least two (2) inch diameter at a height of four and one-half (4.5) feet above the ground. If a tree splits into multiple trunks below four and one-half (4.5) feet, then the trunk is measure at its most narrow point beneath the split.

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<sup>1</sup>Appendix A is provided at the end of this chapter.

(10) "Drip line." An imaginary perpendicular surface of a tree's branch tips down to the ground. The circular area of land surrounding the tree from the trunk to the outermost branches.

(11) "Hardwood tree." Any tree botanically classified as an angiosperm.

(12) "Mature hardwood stand." A grouping of hardwood trees in contiguous areas of one acre or greater in which the average dbh of the hardwood trees is 16" or higher.

(13) "Official city tree." *Quercus alba*, White oak.

(14) "Overstory trees." Those trees that compose the top layer or canopy of vegetation and will generally reach a mature height of greater than forty (40) feet.

(15) "Private tree." A tree that is located on lands for which the city does not have responsibility for tree management.

(16) "Public tree." A tree is located on lands for which the city has responsibility and authority for tree management. Public trees include trees located on dedicated public rights-of-way for which the city has fee simple ownership.

(17) "Replacement tree." Any tree that is designated on a tree replacement plan or landscape plan to be planted on a site.

(18) "Retention tree." Any tree that is designated on a tree survey or tree management plan to be retained on a site.

(19) "Revegetation." The replacement of trees and landscape materials into the minimum required landscape areas, as determined by the zoning ordinance, conditions of zoning approval, or the provisions of this ordinance.

(20) "Root protection zone." The minimum area beneath a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The root protection zone will typically be represented by the dripline of the tree but may be modified by or on approval of the arborist.

(21) "Softwood tree." Any tree botanically classified as a gymnosperm.

(22) "Specimen tree" or "specimen stand." Any tree or collective group of trees which qualifies for special consideration for preservation due to size, type and condition. See § 13-404 for general criteria regarding specimen trees or stands.

(23) "Topping." The severe cutting back of limbs to stubs within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

(24) "Tree." Any self-supporting, woody perennial plant which normally attains a single trunk diameter of five (5) inches or more and which normally attains a mature height of a minimum of fifteen (15) feet.

(25) "Tree bank." An account, maintained by the Finance Department of the City of Lakeland of funds contributed from developers as a form of alternative compliance to the Lakeland Tree Management Ordinance. Funds from the tree bank are to be used solely for the purchase and planting of trees

on public sites within the City of Lakeland as authorized by the city manager or designee.

(26) "Tree board." The body established pursuant to City of Lakeland Ord. #03-53 and further described in § 13-419.

(27) "Tree management plan." A to-scale map or site plan prepared in accordance with § 13-408 of this ordinance, showing among other items, a detailed plan designed to protect and preserve trees before, during and for a period of two (2) years after construction.

(28) "Tree management zone." All areas of a parcel required to remain in open space, or all areas required as landscaping strips or buffers according to the City of Lakeland Zoning Ordinance, conditions of zoning approval or provisions of this ordinance, or any area designated for the purpose of meeting tree density requirements, saving natural trees, preserving the root system of natural trees and/or preserving natural buffers.

(29) "Tree preservation plan." The set of documents required in accordance with § 13-406 of this ordinance, which shall consist of a tree survey pursuant to § 13-407, a tree management plan pursuant to § 13-408 and a tree replacement plan pursuant to § 13-409.

(30) "Tree removal impact fee." A fee to be paid to the City of Lakeland Tree Bank based on the tree removal impact formula found in Appendix C<sup>1</sup> to be used to offset the environmental impact from tree loss within the city.

(31) "Tree removal permit." A formal letter or permit issued by the arborist allowing for the removal of said tree(s) on a property.

(32) "Tree replacement plan." A to-scale map or site plan prepared in accordance with § 13-409 of this ordinance, showing among other items, a detailed planting schedule with proposed tree names, quantity, size, spacing and any special planting notes.

(33) "Trees species selection list." The recommended species of trees for planting within the city maintained and updated periodically by the arborist. Said list will also include species that are determined by the arborist to be discouraged for reasons to be determined by the arborist including but not limited to trees that are detrimental to the native environment or in conflict with this ordinance.

(34) "Tree survey." A to-scale map or site plan prepared in accordance with § 13-407 of this ordinance and noting the location of all specimen trees plus all other trees which will be preserved and counted toward meeting site density requirements.

(35) "Understory tree." Those trees that grow beneath the overstory, and will generally reach a mature height of under forty (40) feet. (as added by Ord. # \_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004, and amended by Ord. #08-125, Nov. 2008)

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<sup>1</sup>Appendix C is provided at the end of this chapter.

**13-403. Referenced standards.** The standards and regulations contained in the city zoning ordinance, the Lakeland Design Review Guidelines and ordinances relating to the same, and those standards of the American National Standards Institute (ANSI) Standards for Tree Care Operations (ANSI A300) or the International Society for Arboriculture (ISA) publication Principles and Practice of Planting Trees and Shrubs, which are incorporated herein by reference as if fully set forth, are an integral part of this chapter. Where provisions of this chapter conflict with a standard of the ANSI A300 guidelines, the ISA guidelines, the Design Review Guidelines or other ordinances or regulations of the city, the most stringent provision shall be enforced. The provisions of this chapter are considered minimum requirements. (as added by Ord. #02-06, April 2002, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-404. Applicability.** (1) No subdivision development plat or plan, building permit, land disturbance permit, rezoning request, or site plan shall be approved by the Lakeland Planning Commission or an authorized Lakeland staff member without such application being in full compliance with the provisions of this ordinance.

(2) As required by this ordinance, a tree survey, a tree management plan, and a tree replacement plan shall be a part of each of the above listed documents.

(3) No person shall remove, cause to be removed, poison, damage, or transplant any tree through an activity regulated by this ordinance without first obtaining a tree removal permit, as herein provided. (as added by Ord. #\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-405. Regulated activities.** The following activities require compliance with the Lakeland Tree Management Ordinance:

(1) Subdivision development (regardless of underlying zoning classification).

(2) Planned residential development (PD) (regardless of underlying zoning classification).

(3) Commercial development (regardless of underlying zoning classification).

(4) Planned commercial development (CP) (regardless of underlying zoning classification).

(5) Any activity requiring issuance of a building permit (regardless of previous approvals on or current use of land).

(6) Any activity requiring issuance of a land disturbance permit (regardless of previous approvals on or current use of land).

(7) Rezoning requests (regardless of previous approvals on or current use of the land).

(8) Any activity requiring site plan approval, including but not limited to, pool permit requests, fence permit requests, and accessory structure permit requests.

(9) Minor subdivisions (regardless of previous approvals on or current use of land).

(10) Timber harvesting (as per § 13-407 of this ordinance).

(11) Construction of utility, sewer, and other infrastructure easements, except as noted in § 13-406 "Exemptions."

(12) Removal of specimen tree(s) for any reason not listed in § 13-406 Exemptions. (as added by Ord. # \_\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-406. Exemptions.** (1) The following activities shall be exempt from the provisions of this ordinance:

(a) The removal of trees, other than specimen trees, from an owner occupied, single family or duplex lot of record where none of the above conditions (13-405) apply.

(b) The removal of trees from agricultural properties, as defined under the laws of the State of Tennessee, except as noted in § 13-407 "Agricultural uses/timber harvesting." This exception shall not be interpreted to include timber harvesting incidental to development of the land.

(c) The necessary removal of trees by a utility company within dedicated utility easements.

(d) The removal of trees on public rights-of-way conducted by on behalf of a federal, state, county, municipal or other government agency in pursuit of its lawful activities or functions in the construction or improvement of public rights-of-way.

(e) The removal of non-specimen trees, from detention ponds and approved public or private drainage easements.

(f) The removal of any tree which has become or threatens to become a danger to human life or property, as determined by an international society of arboriculture certified arborist, or an American society of consulting arborists- registered consulting arborist.

(g) The removal of non-specimen trees, from recreation areas such as playgrounds, ballfields, golf courses and other such approved uses.

(2) Notwithstanding the foregoing, all reasonable efforts shall be made to save specimen trees. Reasonable efforts shall include, but not be limited to, alteration of building design; alternate location of building, parking area, water retention, drainage pipes; or relocation of utilities. (as added by Ord. #\_\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-407. Agricultural uses/timber harvesting.** (1) There shall be a ten (10) year suspension of all development approvals (as defined by this ordinance), rezoning requests, and land disturbance permits for any property upon which timber is harvested pursuant to Tennessee Code Annotated, § 6-54-126 or any similar legislation, ordinance, regulation or rule.

(2) The suspension period shall begin at the time a timber harvesting permit is granted. The permit shall be valid for a period of six (6) months from the date of issuance.

(3) An application and permit from the City of Lakeland is required to harvest timber on any property located within the limits of the City of Lakeland. The application, which shall be provided to the city and reviewed by the arborist, shall include items specified by the city on the application, and will include, but not be limited to, the following items:

(a) A plan for harvesting the timber that is consistent with best management practices for harvesting timber as set forth by the Tennessee Department of Agriculture, Division of Forestry, and

(b) A plan that provides for the subject property to remain in a forested condition unless it is the intent of the property owner to remove the subject property from forest land status, as defined under the laws of the State of Tennessee, although continuing to use the property for agricultural uses, in which case, the property owner shall provide the city with evidence of written notice to the tax assessor, pursuant to Tennessee Code Annotated, § 67-5-1006 and any other applicable state statutes, rules or regulations, that the property owner is withdrawing the subject property from forest land status and its associated tax benefits, and

(c) Site review by the city engineer to ensure that the timber harvest and subsequent agricultural activity, if applicable, will fully comply, in plan and practice, with the city's erosion and sedimentation control ordinance, and will not damage or flood surrounding properties nor increase the established base flood elevation of the upstream or downstream portion of the flood way within or without the drainage basin in which the subject property is located. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-408. General criteria for the determination of specimen trees or stands of trees.** (1) Specimen tree:

(a) Any tree in fair or better condition which equals or exceeds the following diameter sizes:

(i) 24" dbh - Large hardwoods such as oaks, hickories, yellow poplars, sweetgums, etc.

(ii) 25" dbh - Large softwoods such as pines, deodar cedars, etc.

(iii) 4" dbh - Small trees such as dogwoods, redbuds, sourwoods, etc.

(b) A tree in fair or better condition must meet the following minimum standards:

(i) A life expectancy of greater than 15 years.

(ii) A structurally sound trunk, not hollow and having no extensive decay.

(iii) No more than one major and several minor dead limbs (hardwoods only).

(iv) No major insect or pathological problem.

(c) A lesser sized tree can be considered a specimen tree if it meets any of the following criteria:

(i) Is a rare or unusual species, including but not limited to, species federally or state listed as endangered, threatened, or of special concern.

(ii) Is of exceptional or unique quality, including but not limited to, a tree that is the only species of its kind or size within the project area, or a tree that provides habitat for a species that is state or federally listed as endangered, threatened, or of special concern.

(iii) Is of historical significance, including but not limited to, trees listed on the state landmark and historic tree registry or trees listed on the national or state big tree registry.

(d) A lesser sized tree can be considered a specimen tree if it is specifically used by a builder, developer, or design professional as a focus point in a landscape project.

(2) Specimen tree stands. A contiguous grouping of trees which has been determined to be of high value in the opinion of the arborist, based upon the following criteria:

(a) A relatively mature (over 25 years average age for softwood stands, over 75 years average age for hardwood or mixed stands), even-aged stand (less than 10% difference between the oldest and youngest trees within the stand).

(b) A stand with purity of species composition (less than three overstory species present in the stand or more than 80% of stand basal area represented by one species) or of a rare or unusual nature such as stands composed of trees that are state or federally listed as endangered, threatened, or of special concern; or, stands that constitute habitat for species that are state or federally listed as endangered, threatened, or of special concern.

(c) A stand of historical significance, such as trees listed on the state landmark and historic tree registry or trees listed on the national or state big tree registry.

(d) A stand with exceptional aesthetic quality, such as stands of flowering trees or stands used by a builder, developer, or design professional as a focal point in a landscape project. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-409. Minimum tree density requirements.** (1) A basic condition of the Lakeland Tree Management Ordinance is that all applicable sites maintain a minimum tree density of twenty (20) units per acre. Applicable sites, for this section, include but are not limited to, land upon which:

- (a) A residential subdivision (including planned developments) is being developed;
- (b) A commercial subdivision (including planned commercial) is being developed;
- (c) Any activity requiring issuance of a land disturbance permit is carried out;
- (d) Construction of a single-family and/or duplex residential dwelling is being undertaken (unless in accordance with an approved development where tree density has been addressed and approved by the city).

The term “unit” is an expression of basal area, and is not synonymous with “tree.” The density requirement must be met whether or not a site had trees prior to development or disturbance of the applicable site. The density may be achieved by preserving existing trees, by planting new trees according to the minimum standards in this ordinance or by a combination of the two. Minimum tree density shall be calculated and established pursuant to the formula and analysis set forth in Appendix A<sup>1</sup> to this ordinance. Any existing tree of not less than six (6) inches dbh left in good growing condition on the property is eligible to be counted toward the minimum required density. The property owner shall be subject to the minimum tree density requirement set forth in this section. The property owner shall base the density calculation on the gross site area.

(2) Trees replanted to achieve density requirements are to be selected species from the City of Lakeland Tree Species Selection List, on file with the city. In addition, replanting shall be at the ratio of not less than one (1) overstory tree for every three (3) understory trees. Density credit may be met by planting all overstory trees, but not by planting only understory trees. No more than forty (40) percent of any one genus may be included in any replanting plan. Exceptions to this requirement may be authorized by the arborist where in his opinion an exception is justified. Refer to Table 2, Appendix A<sup>1</sup> of this ordinance for minimum size requirements of replacement trees. All replacement

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<sup>1</sup>Appendix A is provided at the end of this chapter.

trees will be maintained properly to ensure their survivability. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-410. Alternative compliance to tree density requirements.**

(1) One of the intentions of this ordinance is to ensure that a minimum density of trees is maintained on all applicable sites, as defined in this ordinance. If this intent cannot be met because a site will not bear the required density of trees, two methods of compliance, at the discretion of the city arborist, may be acceptable:

- (a) Planting at a location remote from the project site; or
- (b) Contributing to the City of Lakeland Tree Bank.

(2) The following standards have been established for administering these alternative compliance methods. The arborist must review and approve all requests for alternative compliance. In no instance shall one hundred percent (100%) of the required site density be met through alternative compliance. As many trees as can reasonably be expected to survive must be planted on the site in question.

(3) No development approval (as defined by this ordinance), land disturbance permit, or building permit shall be issued until the arborist has approved the request and received the necessary documentation and/or funds for the alternative compliance method.

(4) If trees are to be planted at another location, a tree replacement plan, meeting all applicable standards, must be reviewed and approved. The following note must be shown on the approved plan: "A tree replacement plan addendum for this project shall be submitted to the Arborist for the City of Lakeland in conjunction with the construction plans for the proposed activity. This plan shall include the species, size and location of trees to be planted off-site to meet the tree density deficit shown. Final acceptance of this project is subject to approval of this plan, as well as verification of the installation of the trees."

(5) As another method of alternative compliance, the City of Lakeland will accept donations to the City of Lakeland Tree Bank. These donations will be used for the sole purpose of planting trees on public property within the City of Lakeland. For calculating contributions to the City of Lakeland Tree Bank, see Appendix B<sup>1</sup> of this ordinance.

(6) The City of Lakeland Tree Bank will be administered by the arborist. An annual report shall be submitted to the Lakeland City Manager showing amounts collected, amounts spent, and the type and location of trees planted. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

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<sup>1</sup>Appendix B is provided at the end of this chapter.

**13-411. Application requirements.** The following section details what documents are required to be submitted for different regulated activities. This section is not all-inclusive. Other requirements may apply, as detailed in §§ 13-412, 13-413, and 13-414 of this ordinance. The timing of submission of these documents is addressed in the Lakeland Development Handbook and the Administrative Guidelines to the Lakeland Tree Management Ordinance on file with the city the most recent of which shall govern.

When a person applies for a permit or approval for one of the regulated activities as per § 13-405 of this ordinance, such person shall also file an application for a tree removal permit providing the following information:

(1) A complete tree survey as specified in § 13-412. A tree survey shall be submitted for the regulated activities listed in § 13-405 of this ordinance, items 1-9 or as required by the arborist. Items 10-15 of § 13-405 do not require submission of a tree survey but shall require an on-site inspection, by the arborist or designee, of the proposed activity.

(2) A complete tree management plan, as specified in § 13-413. This plan shall be an integrated site plan showing specimen trees, the tree management zones, those trees to be saved and those to be removed, utilities to be installed, grading, the approximate location of all structures, driveways, and curb cuts, proposed tree planting and other landscaping. A tree management plan shall be submitted for the regulated activities listed in § 13-405 of this ordinance, items 1-6 and item 8 when determined applicable by the arborist, or as required by the arborist.

(3) A complete tree replacement plan as specified in § 13-414. Replacement trees used in density calculation must be ecologically compatible with the intended growing site. A list of acceptable replacement trees is provided in the City of Lakeland Tree Species Selection List, on file with the city. A tree replacement plan shall be submitted for the regulated activities listed in § 13-405 of this ordinance, items 1-5 or as required by the arborist.

(4) A conservation plan may be required during the conceptual stage of plan review in order to provide a sufficient depiction of the natural features of the site and the adequacy of the development design in maximizing conservation of those natural features as per the Residential Guidelines of the City of Lakeland Comprehensive Plan. The conservation plan shall be a representative sketch showing the boundaries of the site as well as the approximate locations of natural features of the site being developed, including but not limited to, mature hardwood stands one acre or greater, specimen trees, streams, wetlands, and other bodies of water, historic or cultural features, steep slopes (greater than the angle of repose) and steep slope features, such as natural amphitheaters, contours, as well as any other features requested by the natural resources director or the city planning staff in order to determine the extent to which conservation of natural features have been incorporated into the proposed site design.

(5) Minor subdivisions, as defined in the Lakeland Zoning Ordinance, require submittal of a tree survey as specified in § 13-412. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-412. Tree survey.** (1) Before the commencement of any regulated activity listed in this ordinance § 13-405, items 1-9, a tree survey is required. An on-site inspection by the arborist or designee is required before commencement of any of the regulated activities as listed in this ordinance § 13-405, items 10-15.

(2) The tree survey shall be a to-scale map or a site plan prepared, signed, and sealed by a registered surveyor or certified engineer, and signed by an International Society of Arboriculture (ISA) Certified Arborist, Society of American Foresters (SAF) Certified Forester, or landscape architect noting the location of all specimen trees and all other trees which will be preserved and counted toward meeting site density requirements.

(3) All specimen trees and their root protection zones shall be labeled, and must be shown on the survey and inventoried by size and species. This includes those specimen trees that are to be preserved as well as those proposed for removal. When the root protection zone of a specimen tree whose trunk is located on an adjacent property overhangs the proposed project area, the approximate location, size, species, and root protection zone of this specimen tree shall be provided on the tree survey. This provision shall not authorize the trespass on private property abutting the site. If disturbance is proposed within the root protection zone of this specimen tree, an application for a tree removal permit, specifically for this specimen tree, shall be submitted. The arborist may require that other sizes and species of trees be shown on the tree survey if determined to be necessary to provide an adequate depiction of the forest resources on the site or to adequately calculate tree density units.

(4) All other trees that are to be counted toward meeting density requirements must be shown on the survey and inventoried by size and species. Only trees with a dbh measurement of six (6) inches or greater are to be identified as eligible for density compliance purposes. Existing trees less than six (6) inches dbh will not be counted toward EDF.

(5) Trees, other than specimen trees and those required by the arborist to be shown on the tree survey, that are proposed for removal, and thus cannot be counted toward density requirements, are not required to be counted and shown individually on the tree survey. Such trees shall be identified on the tree survey as a stand(s) with an estimate of the number of trees by size class and species provided.

(6) Sampling methods may be used to determine tree densities for forested areas over five (5) acres.

(7) All tree management zones must be delineated on the tree survey. All buffers with existing trees must be delineated on the tree survey as tree

management zones. Disturbance within any buffer is subject to determination by the arborist that the disturbance would not foreseeably reduce the survivability of existing trees within the buffer or that the existing trees within the buffer are not suitable for retention or will not be counted toward density requirements.

(8) The tree survey shall provide an accurate list of those trees to be saved and a total value of EDF units for the entire property. (as added by Ord. #\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-413. Tree management plan.** (1) Before the commencement of any regulated activity listed in this ordinance § 13-405, items 1-6 and item 8 when determined applicable by the arborist, or as required by the arborist in order to demonstrate that the proposed activity will not foreseeably reduce the survivability of any trees within the project area or affected by the project area that are proposed for retention, a tree management plan is required.

(2) The tree management plan shall be a detailed plan designed to protect and preserve trees before, during and for a period of two (2) years after construction. Any trees designated for retention on the tree management plan that die or are severely damaged within the first two (2) years after construction shall be replaced in accordance with this ordinance. These replacement trees shall be maintained for a minimum of two (2) consecutive years after planting or replacement.

(3) The tree management plan shall be submitted as a separate drawing unless the arborist approves the combination of the tree management plan with the tree replacement plan on a single drawing where this combination would not sacrifice the clarity of the documents.

(4) The tree management plan shall be submitted on a current survey of the proposed site, drawn to scale and showing clearly all required information as outlined by this section for acceptance as the plan required in § 13-413 (2). Required specifications for a tree management plan include, but are not limited to, the following:

(a) The identity of the tract of land upon which tree(s) sought to be removed are located.

(b) The name, address and phone number of the owner of the land and the name, address and phone number of any tenant of the property.

(c) The type, location and size as measured at dbh of the tree(s) to be protected. Only trees designated for retention on the tree management plan will be counted toward density requirements.

(d) Locations of all specimen trees, their root protection zones, and an indication of those specimen trees proposed for removal or for preservation. Removal of specimen trees is subject to approval by the

arborist. Any specimen tree proposed for removal is to be identified in terms of exact location, size and species.

(e) All tree management zones, natural areas, landscaped areas, buffers and areas of revegetation. Include detailed locations and specifications for active and/or passive tree management measures. Methods of tree management shall be indicated for all tree management zones, including tree fencing, erosion control, retaining walls, tunneling for utilities, aeration systems, transplanting, staking, signage, etc.

(f) Limits of clearing and land disturbance such as grading, trenching, etc. where these disturbances may affect tree management zones.

(g) The locations of all existing and proposed utility lines or easements. Include the location for any boring sites for underground utilities.

(h) Indication of staging areas for parking, material storage, concrete washout, debris burn and burial holes and other areas where tree management may be affected during construction.

(i) A delineation of tree management zones in which trees have been inventoried for density calculations.

(j) Calculations showing compliance with the required site density factor using existing trees, replacement trees, and/or alternative compliance methods. Site density compliance shall be demonstrated on the tree management and tree replacement plans. Existing trees or stands of trees used in the density calculation must be indicated on the drawing. Only existing trees with a dbh of six (6) inches or greater are eligible to be counted toward the minimum tree density requirements.

(k) Site area

(l) The locations of existing and proposed structures, paving, driveways, cut and fill areas, detention areas, etc.

(m) Phase lines or limits of construction.

(n) Location and details for all permanent tree management measures (tree wells, aerations systems, permeable paving, retaining walls, bollards, etc.)

(o) Additional information as required on a case-by-case basis or as requested by the arborist regarding:

(i) Prior to approval of the tree management plan, the arborist may require relocation or replacement of trees as uniformly as possible throughout the site.

(ii) Prior to approval of the tree management plan, the arborist may require the use of active tree management fencing for any or all tree management zones. Passive tree management fencing is to be used only for areas remote from construction activity. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-414. Tree replacement plan.** (1) Before the commencement of any regulated activity listed in this ordinance § 13-405, items 1-5 or as required by the arborist in order to demonstrate compliance with density requirements, a tree replacement plan, as described in this section, is required. This plan shall be submitted as a separate drawing but may be included as a part of the tree management plan upon determination by the arborist that the combination will not sacrifice the clarity of the documents.

(2) The tree replacement plan shall include planting schedules with proposed tree names (botanical and common), quantity, size, spacing and any special planting notes.

(3) Unless otherwise approved by the arborist, trees selected for replanting must be on the City of Lakeland Tree Species Selection List on file with the city. Trees selected must be free from injury, pests, disease, nutritional disorders or root defects, and must be in good vigor in order to assure a reasonable expectation of survivability. Standards for transplanting shall be in keeping with those established in the International Society of Arboriculture publication Tree and Shrub Planting Manual or similar publication.

(4) It is desirable that replanted trees be ecologically compatible with the site and neighboring sites. Accordingly, the replanted trees shall be of the same or similar species as those removed when practical. The composition of replacement trees shall be no more than 20% softwood unless specifically approved by the arborist.

Replacement trees shall be species native to the region unless approved by the arborist. The arborist may approve the use of non-native species if those species are well adapted to the area and do not have invasive properties. In no case, shall species listed as Rank 1, 2, or 3 or listed on Watch List A or B on the Southeast Exotic Pest Plant Council's list "Invasive Exotic Pest Plants in Tennessee," latest edition, be accepted as replacement trees.

(5) The use of flowering ornamental trees or plants classified as large shrubs may be included in the tree replacement plan, but shall not be used for the purpose of meeting density calculations for the site unless approved by the arborist.

(6) All replanted overstory trees shall be a minimum of six feet (6') tall and have a trunk of not less than two (2") caliper inches. All replaced understory trees shall be in a minimum of four feet (4') tall and have a trunk of not less than one caliper inch (1"). In order to provide sufficient growing area for planted trees, the following minimum criteria must be observed unless otherwise approved by the arborist:

- (a) Overstory trees - 200 square feet or pervious root zone
- (b) Understory trees - 75 square feet of pervious root zone

(7) For residential single family detached or duplex dwellings, smaller caliper replacement trees will be considered provided the total minimum tree density requirement is satisfied. A list of proposed plant species and sizes shall be submitted in writing to the arborist.

(8) Planting and staking details shall be provided on the plan and adhere to International Society of Arboriculture (ISA) standards or the Tennessee Division of Forestry Tree Planting Guidelines, whichever is more stringent.

(9) Trees must be relocated or replaced on site in accordance with the provisions of this ordinance.

(10) Any trees that die or are severely injured within a two (2) year period after replacement, original replacement, or any subsequent replacement shall be replaced with equivalent species and sizes by the permittee. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-415. Inspection.** Following the receipt of each required component of the completed tree removal application, (tree survey, tree management plan, and tree replacement plan) and supporting data, if applicable, the arborist shall schedule and conduct an inspection of the proposed development site within ten (10) working days. The applicant or his designee shall be advised as to the date and time of the inspection and given an opportunity to participate. Following inspection, the arborist, consistent with the purposes of this ordinance, shall advise the applicant of any recommended changes in the applicant's proposal. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-416. Permit procedures.** (1) Prior to approval of any regulated activity, as listed in this ordinance § 13-405, or the issuance of any tree removal permit, all applicable documents, determined by the arborist as necessary to demonstrate compliance with this ordinance (e.g. tree survey, tree management plan, tree replacement plan), must be submitted to and reviewed by the arborist. The arborist shall have 30 days to review all applicable documents.

(2) All applicable plans and related documentation shall be reviewed by the arborist for conformance to the provisions of this ordinance. Based on this review, the arborist will approve, return for revision, or deny the application, or give a written recommendation to the approving body for approval, revision, or denial. If denied, the reasons for denial shall be annotated on the plans or otherwise stated in writing.

(3) After completion of the approval process, the arborist or designee will be charged with the responsibility of inspecting the site to ensure that trees are adequately protected during the permitted or approved activity including any grading of the property for infrastructure installation. To adequately protect the site, tree management zones shall be delineated in the field with tree management fencing.

(4) All tree management measures shall be installed prior to any land disturbance, and the arborist shall be contacted for a pre-construction conference prior to land disturbance. Land disturbance may proceed only after

a permit is obtained and the arborist has approved the tree management measures.

(5) After completion of a development, the arborist will conduct an on-site inspection of the site to ensure compliance with the tree management plan.

(6) The arborist shall make unscheduled inspections before and during development to ensure management of trees, root protection zones and tree management zones. Any person, firm or corporation not properly managing retention trees, replacement trees, root protection zones, or tree management zones, including but not limited to, not maintaining tree management fencing shall be in violation of this section and will be issued a notice of violation by the city. If the violation(s) is not corrected within 48 hours of the issuance of this notice, a stop work order will be issued by the city and the person, firm, or corporation in violation shall be fined not more than the maximum allowable fine under state law and the provisions of this ordinance. Each day's continuance of a violation shall constitute a separate offense.

(7) No tree removal permit shall be issued until it has been determined that the proposed activity is in conformance with this ordinance. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-417. Removal of trees--conditions and exceptions.** (1) Tree removal shall not be allowed where the following circumstances exist:

(a) Soil erosion or runoff problems will result due to topography, soil type, or proximity to flood plain areas, and the removal will substantially and adversely alter the existing soils with regard to runoff and erosion. Information submitted by the city engineer or other environmental specialist may be used by the arborist in his evaluation of this criterion.

(b) Reasonable accommodations can be made to alter the proposed project to save specimen trees.

(2) Tree removal from a site may be allowed where the following circumstances exist:

(a) The tree is located in an area where a structure or improvement will be placed and the tree cannot be relocated on the site because of age, type or size of tree.

(b) The tree is diseased or structurally unsound.

(c) The tree poses an imminent danger.

(d) The tree interferes with existing utility service.

(e) The tree creates an unsafe vision or clearance for vehicular movement.

(3) Trees must be relocated or replaced on site in accordance with the provisions of this ordinance. Prior to approval of the tree management plan, the arborist may require relocation or replacement of each tree being moved or removed on the site to be supplemented with additional trees to establish within

the tree management zone a minimum of one tree per five hundred (500) square feet of minimum required open space.

(4) Debris removed. All debris from trees cut or substantially damaged shall be removed from the site in a timely fashion, including the removal of any portion of the tree stump above the original natural grade or elevation of land, unless excepted by the arborist for good cause shown. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-418. Tree management during construction.** (1) No person during construction of any structure(s) or improvement(s) or during any activity regulated by this ordinance shall encroach, place solvents, material, construction machinery, portable toilets, construction trailers, place temporary soil deposits within, strip the topsoil, or remove the natural leaf layer from within the root protection zone, as defined herein, of any specimen tree or any tree within a tree management zone unless authorized by the arborist in writing.

(2) Before development, land clearing, filling, land alteration, or commencement of any activity regulated by this ordinance, the developer and/or landowner, shall be required to erect suitable protective barriers as required by the arborist, including tree fences, tree management signs, and erosion barriers until completion of site landscaping. Authorization to remove the protective devices shall be in writing by the arborist. Inspection of tree management barriers is required prior to any land disturbance, development, or commencement of any activity regulated by this ordinance. The arborist shall be contacted to schedule an inspection time.

(3) Materials for active tree management shall consist of chain link, orange laminated plastic, wooden post and rail fencing or other equivalent restraining material.

(4) Materials for passive tree management shall consist of heavy mil, plastic flagging, a minimum of three (3) inches wide with dark letters reading "Tree Management Area - Do Not Enter" or equivalent signage on a continuous, durable restraint.

(5) All tree management devices must remain in functioning condition until the completion of the project.

(6) The arborist may recommend specific tree management measures to be performed during the construction/development process to maintain and promote the health and probability of survival of trees proposed for retention. The arborist, before the completion of the regulated activity, must provide these measures in writing to the developer or applicant for tree removal permit. The developer or applicant for a tree removal permit shall utilize the services of an ISA certified arborist to perform, or cause to be performed, these measures which may include, but are not limited to:

(a) Watering, mulching, fertilizing and treating tree for pests or disease as needed and in accordance with the standards of the International Society of Arboriculture.

(b) Felling trees away from tree management zones.

(c) Pruning where necessary in accordance with the American National Standards Institute (ANSI) A300 standards and with the approval of the arborist. "Topping" or severe pruning is prohibited on any tree to be retained during the proposed activity. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-419. Tree damage.** Any non-specimen tree, designated in the tree management plan to be retained, which is damaged during or as a result of any regulated activity listed in § 13-405 of this ordinance, as determined by the arborist, shall be treated according to accepted American National Standards Institute (ANSI) standards, or, if determined by the arborist to be irreparably damaged, replaced with a tree or trees equal to the unit value of the tree removed. Any specimen tree damaged as described above shall be treated in accordance with ANSI A300 standards or, if determined by the arborist to be irreparably damaged, replaced with trees equal to two (2) times the unit value of the tree removed or damaged. If a damaged specimen tree must be removed, the area occupied by its dripline must remain in a previous state. A replacement plan for such area must be approved by the arborist prior to issuance of a final plat. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-420. Tree removal and construction companies.** All applicable provisions of this ordinance shall apply to the property owner and any person removing trees on behalf of any other person, including all tree removal companies, utility companies or persons in the business of construction or removing trees, while undertaking any activity regulated by this ordinance. It shall be unlawful for any person or company to remove or cause to be removed any tree, or undertake any work for which a tree removal permit is required pursuant to this ordinance, unless a valid permit thereof is in effect and is displayed in accordance with the provisions of § 13-421. If any such work or removal is performed without the permit being displayed as required in § 13-421, such removal or work shall constitute a violation of this ordinance and shall subject the person or company violating this ordinance to all penalties provided herein. However, utility companies may provide emergency work without formal approval; provided, however, that emergency actions are reported in writing to the arborist within three (3) working days after completion of all emergency services. Further, the permit taken by any person, company or utility under this section may include defined areas of tree cutting and trimming under one permit. All tree removal companies, utility companies

or persons in the business of construction or removing trees shall remove from the site any trees, stumps, limbs or debris caused by activities allowed by the issuance of a permit under this ordinance. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-421. Display of permit and inspections.** The applicant shall prominently display the permit issued on the site. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit. As a condition for the issuance of a permit, the applicant shall agree to entry onto his premises by representatives of the City of Lakeland to inspect the permit and activities at any time, and such entry shall be lawful. Failure to allow such entry shall be unlawful and shall constitute failure to display the permit as required under this section. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-422. Emergencies.** In case of emergencies, such as hurricane, tornado, windstorm, flood, ice storm or other disasters, the requirements of these regulations may be waived by the arborist or other designated official, upon a finding that such waiver is necessary so that public or private work to restore order in the City of Lakeland will not be impeded. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-423. Fees.** Each applicant requesting a permit under the provisions of the Lakeland Tree Management Ordinance shall deposit a nonrefundable fee with the City of Lakeland, as per the most recent City of Lakeland Fee Schedule,<sup>1</sup> on file with the city. Provided, however, no fees shall be charged on any application filed solely within a public right-of-way. Provided, further, that no fee shall be charged on any application where the arborist determines that the tree(s) meet the criteria contained in § 13-417(2)(b-e).

The removal of any tree with a dbh of 16 inches or greater as part of a development approval and which is not in violation of the terms and provisions of this ordinance shall be offset with a tree removal impact fee equal to the tree removal impact formula found in Appendix C<sup>2</sup> of this chapter. This fee shall be placed in the City of Lakeland Tree Bank and be used to offset the environmental impact of tree loss within the city through the planting and maintenance of trees on public property. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

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<sup>1</sup>Municipal code reference  
Fee schedule: appendix A

<sup>2</sup>Appendix C is provided at the end of this chapter.

**13-424. Municipal tree management.** There is hereby created and established a Lakeland Natural Resources Board. This board shall consist of at least five (5) members and no more than seven (7) members, citizens and residents of Lakeland, who shall be appointed by the mayor and board of commissioners. Members of the Lakeland Natural Resources Board shall serve without compensation. The terms of the Lakeland Natural Resources Board shall be three (3) years. Initial appointments shall establish staggered terms by appointing two (2) members to three (3) year terms, two (2) members to two (2) year terms and the remainder of the members to one (1) year terms. There shall be one (1) member of the board of commissioners appointed to serve on the natural resources board with a one (1) year term. The Lakeland Natural Resources Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of its members shall be a quorum for the transaction of business. The duties of the natural resources board include: providing a venue to hear citizen concerns regarding natural resources related issues and to make recommendations or otherwise provide assistance to the board of commissioners or other boards regarding these community issues; to periodically review natural resources management ordinances and policies and to make recommendations to the board of commissioners regarding regulations and policies; to promote environmental education within the City of Lakeland; to promote pride and community interest in natural resources; to serve as a forum for the introduction of innovative ideas, programs, and policies related to natural resources; and to develop, coordinate, and monitor projects that promote pride in and beautification of the City of Lakeland. (as added by Ord. #\_\_\_\_, Feb. 2001, replaced by Ord. #03-36, June 2003; Ord. #03-53, Nov. 2003; and Ord. #04-73, Dec. 2004; amended by Ord. #05-81, Sept. 2005, and Ord. #08-114, March 2008, and replaced by Ord. #10-144, Feb. 2010)

**13-425. Applicability.** The provisions of this section, which shall be consistent with forestry policy and practice for urban areas promulgated by the Tennessee Department of Agriculture, Division of Forestry, shall be applicable to all trees located on lands for which the city has responsibility and authority for tree management, public trees, or as otherwise specified in this section. (as added by Ord. #\_\_\_\_, Feb. 2001, and replaced by Ord. #03-36, June 2003, and Ord. #04-73, Dec. 2004)

**13-426. Tree planting.** No person, organization, firm, or corporation shall plant or cause to be planted any public tree without first obtaining written approval from the arborist. Further, any planting of a public tree shall conform to and the arborist shall base the approval or disapproval of any public tree planting request on the standards set forth in this section.

(1) Source of supply. (a) All plant materials supplied shall conform to the latest edition of the American Standard for Nursery Stock, as approved by the American National Standards Institute, Inc.

(b) All trees may be inspected and approved by the arborist, or his duly authorized representative, at the source of supply prior to digging. All materials are to be of the highest quality.

(c) All plant materials shall have been grown under climatic conditions similar to those in the city.

(d) All plants shall be typical of their species or variety and shall have a sufficient normal growth of spread and height. They shall be sound, healthy and vigorous, well-branched and densely foliated when in leaf. They shall be free of disease, insect pests and larvae. They shall have healthy, well-developed root systems. One-sided plants or plants taken from tightly planted nursery rows will be rejected.

(2) Inspection. (a) All plant material may be inspected and approved by the arborist, or his duly authorized representative, prior to digging. Inspection and approval by the arborist, or his duly authorized representative, at the source of supply does not abdicate the right of the arborist to reject any materials after they have been delivered to the site. A final determination of acceptability of the material will be made at the time of delivery. The city will notify the nursery either by phone or in writing no more than five days after delivery of all materials not acceptable to the arborist.

(b) Plant material certificates of inspection, where required by federal, state or other governmental agencies, are to accompany all shipments.

(3) Planting. (a) All trees planted on public property shall be of a kind (species) referenced on the city's recommended tree species selection list, on file with the city.

(b) To curtail the spread of disease or insect infestation in a plant species, no more than 40 percent of these trees to be planted on a site shall be of one genus.

(c) Trees should be placed in a configuration that promotes energy conservation in buildings, through the moderating effects of shade and the manipulation of air currents provided by the strategic location of trees.

(d) Tree planting operations should be scheduled to complete the work within a time which is advantageous to the survival of the tree.

(e) Trees shall be planted in accordance with ISA guidelines.

(4) Tree spacing. The spacing of planted trees shall be in accordance with the two species size classes listed in the City of Lakeland Tree Species Selection List with no trees planted closer than the following:

(a) Understory trees - 15 feet apart, as measured from the center of the tree trunk.

(b) Overstory trees - 30 feet apart, as measured from the center of the tree trunk.

(c) A proposal to vary from these spacing requirements by grouping trees to achieve a special landscape effect may be approved by the arborist.

(5) Tree location. (a) No overstory trees shall be planted under or within ten (10) lateral feet of any overhead utility transmission line nor within five (5) lateral feet of any underground water line, sewer line, transmission line or other utility.

(b) No tree shall be planted closer than ten (10) feet to a fire hydrant, utility pole or streetlight. No overstory tree shall be planted within four (4) feet of any curb or sidewalk. No tree shall be planted in such a way as to obstruct the vision within the "sight triangle" as defined in the City of Lakeland Subdivision Regulations.

(c) Trees that are to be planted shall be selected from species suitable for the proposed site conditions, including but not limited to, soil moisture, pH, and light requirements. (as added by Ord. #04-73, Dec. 2004)

**13-427. Tree maintenance.** It shall be unlawful for any person, organization, firm, corporation or city department to perform maintenance as described herein on any public tree, as defined in this ordinance, in a manner inconsistent with ANSI A300 standards for tree care or in a manner that would violate the provisions of this section. Further, it shall be unlawful for any person, organization, firm, or corporation to perform maintenance as described herein on any public tree without first obtaining written authorization and approval from the arborist. This approval or disapproval shall be based on the following standards and the ANSI A300 standards for tree care.

(1) Topping. The practice of tree topping, as defined in this ordinance, is prohibited on all public trees.

(2) Pruning. (a) Tree pruning shall be performed in a manner that protects the public. Public trees and private trees, as defined in this chapter, the branches of which suspend over public sidewalks and roadways shall be pruned by the responsible party to meet the following standards:

(i) The area above a sidewalk surface must be clear of branches for a minimum of eight (8) feet.

(ii) The area above a street surface must be clear of branches for a minimum of twelve (12) feet.

(iii) Tree branches must not obstruct the view from the roadway of any street sign or stop sign.

(iv) No structure, planting or object of natural growth shall be placed or permitted to remain in such a manner as to

obstruct vision within the "sight triangle," as defined in the City of Lakeland Subdivision Regulations.

(v) Trees shall be kept pruned of any dead, diseased or structurally damaged limbs or branches that could fall into the right-of-way or onto public property and thereby constitute a threat to public safety.

(b) It shall be unlawful for any person, organization, firm, corporation, or city department to prune or cause to be pruned any public tree in a manner inconsistent with ANSI A300 standards for tree pruning.

(3) Other maintenance. Other maintenance practices on public trees, including but not limited to, mulching, watering, insect and disease control, fertilization, inoculation, and growth regulation shall be performed in a manner consistent with ISA standards or ANSI A300 standards whichever is more stringent or protective of tree health. (as added by Ord. #04-73, Dec. 2004)

**13-428. Removal of trees.** The removal of trees within the city is deemed to sometimes be necessary to protect the safety of persons and property, to remove the risk of damage to overhead lines and obstruction of streets and to enhance the aesthetics of the city. In such cases, the provisions of this section shall apply.

(1) Hazardous public trees. The city shall, in the normal course of its duties, periodically conduct surveys to determine the location and severity of hazardous public trees. Dead, diseased or structurally damaged public trees that pose a safety or health risk to the public or to other trees shall be removed or the hazard otherwise mitigated by the City of Lakeland Natural Resources Department or Parks and Recreation Department in a timely manner. The city manager or his designee shall evaluate the dead, diseased or structurally damaged tree as to the degree of hazard. This evaluation shall be made using the International Society of Arboriculture (ISA) Standard Tree Condition Evaluation Guide or other comparable method. The results and an accompanying recommendation will be forwarded to the director of natural resources or director of parks and recreation for action.

(1) Hazardous private trees. (a) When the city determines that a private tree, as defined in this chapter, is hazardous, as per the ISA Standard Tree Condition Evaluation Guide or other comparable method, and therefore should be removed, it shall provide written notice of this hazard to the party responsible for property management.

(b) Notice sent by the city as aforesaid shall advise the responsible party to remove the hazardous tree not later than 60 days from the date of the mailing of the notice except as provided in § 13-427(2)(a)(iii) of this chapter.

(c) In the event that the city determines that the tree poses an imminent safety hazard to the general public or adjacent properties, the

notice aforesaid may establish a time requirement for removal shorter than 60 days.

(d) If the responsible party fails to remove a hazardous tree within the time specified in the written notice from the city, such failure shall constitute a violation of this division and shall be punishable in accordance with state law and the provisions of this ordinance.

(e) If the responsible party fails to remove a hazardous tree within the time specified in the written notice from the city, and if the city determines that the hazardous tree constitutes an imminent threat to the property of others or to the general public or could result in damage to overhead lines or obstruction of streets, the city shall have the right to enter upon the property and remove the tree, and all costs incurred by the city in such regard shall be due and payable from the responsible party to the city upon demand, and, if not paid, the city shall have the right to file a notice of lien in the Register's Office of Shelby County, Tennessee and proceed to collect such costs and enforce such lien in accordance with the provision of law and consistent with the provisions of § 13-434 of this chapter.

(2) Authorization for public tree removal. It shall be unlawful for any person, organization, firm, or corporation to remove or cause the removal of any public tree, as defined in this ordinance, without first obtaining a tree removal permit from the arborist. The applicant for said tree removal must apply in writing to the city stating reasons for the tree removal. Upon receipt of the application, the arborist shall review the application and evaluate the tree in question. If the tree in question is a non-specimen tree, or is determined by the arborist to be a hazard to public safety, the arborist may make a decision regarding its removal. Such decision will be made within 30 days of receipt of the application. If the tree in question is a specimen tree, the arborist shall forward the removal request to the Lakeland Natural Resources Board along with a recommendation. The natural resources board decision shall be final.

(3) Removal of stumps. All stumps of removed public trees shall be removed below the surface of the ground so that the top of the stump shall not project of the surface of the ground. Stump removal shall be performed by the responsible party in a timely manner after tree removal.

(4) Invasive species. Pubic trees that are listed on the Southeast Exotic Pest Plant Council's Invasive Species List, or are otherwise determined by the arborist to be a threat to the native vegetation of the area, may be removed, or caused to be removed, by the City of Lakeland Natural Resources Department of Parks and Recreation Department. The arborist shall make a recommendation regarding the removal of such trees to the appropriate authority. (as added by Ord. #04-73, Dec. 2004, and amended by Ord. #05-81, Sept. 2005, and Ord. #08-125, Nov. 2008)

**13-429. Qualifications of contract tree companies.** All tree care workers and companies hired by the city or by outside parties that perform work on public trees shall provide the city with proof of at least one ISA certified arborist on staff or consulting with the company or individual. (as added by Ord. #04-73, Dec. 2004)

**13-430. Trees of historic or special significance.** A tree of significant age, size or history can constitute a unique asset to the community. The board of commissioners, upon the recommendation of the natural resources board, can designate a unique specimen as a Lakeland heritage tree. A public tree so designated will be given special protection and maintenance, and special recognition as the situation warrants. (as added by Ord. #04-73, Dec. 2004)

**13-431. Official city tree.** It is hereby decreed that the *Quercus alba* (white oak) shall be the official city tree. This selection is made because of its history, superior form and shape, its value to wildlife, and its strength of structure and life span in our geographic area. While it is not recommended that this species be selected over other species in planting on public or private property, it is recommended that the tree be recognized as a symbol of the community. (as added by Ord. #04-73, Dec. 2004)

**13-432. Appeal.** An appeal to the board of appeals may be taken by any person, firm or corporation aggrieved, or by any governmental officer, department, board or bureau affected by any decision of the arborist based in whole or in part upon the provisions of this ordinance. Such appeal shall be taken by filing with the board of appeals a notice of appeal, specifying the grounds thereof. The arborist shall transmit to the board all papers constituting the record upon which the action appealed was taken. The board shall fix a reasonable time for the hearing of the appeal, giving public notice thereof, as well as due notice to the parties in interest, and decide the same within fifteen (15) days from the date of the hearing. Upon the hearing any person or party may appear and be heard in person or by agent or attorney.

With regards to this ordinance, the board of appeals shall have the following powers:

(1) **Administrative review.** Appeal of decision by arborist. To hear and decide appeals where the appellant alleges that there is error in any order, requirement, decision or change made by the arborist or other administrative official in the refusal, carrying out or enforcement of any provision of this ordinance.

(2) **Variance from tree ordinance.** To hear and decide applications for variance from the terms of this ordinance, but only where by reason of exceptional narrowness, shallowness or shape of specific piece of property which at the time of adoption of this ordinance was a lot of record; or where, by reason of exceptional topographic conditions, physiographic conditions, soil physiology,

or other extraordinary or exceptional situation or conditions of a piece of property the strict application of the provisions of the ordinance would result in exceptional difficulties or the exceptional and undue hardship upon the owner of such property, provided that such relief may be granted without the substantial detriment to the public and without substantially impairing the intent and purpose of this ordinance. Financial disadvantage to the property owner is no proof of hardship within the purpose of this ordinance and as further explained below. The board shall not grant a variance unless it makes findings based upon evidenced presented to it as follows:

(a) Physical or topographical conditions. The particular physical surroundings, shape, or topographic conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out.

(b) Relationship to other properties within the district. The conditions upon which the petition for variance is based would not be applicable, generally, to other property within the same district.

(c) Permitted activity. The variance will not authorize activities in a zoning district other than those permitted by this ordinance.

(d) Financial implications. The variance is not based solely on financial returns.

(e) Self-created hardship. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.

(f) Special privilege. Granting the variance will not confer on this applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

(g) Minimum variance required. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

(h) Effect on public welfare. Granting the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which property is located.

(i) Effect on adjacent properties. The variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.

(j) Physiological conditions. The physical geology of or soil conditions on the site are such that the site has historically not sustained nor is capable of sustaining tree cover.

(k) Prohibited uses. Under no circumstance shall the board of appeals grant a variance to allow a use not permissible under the terms

of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

(3) Conditions and restrictions by the board of appeals. The board of appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to reduce or minimize the injurious effect of such variation upon surrounding property and better carry out the general intent of this ordinance. (as added by Ord. #04-73, Dec. 2004)

**13-433. Penalty.** Any person, firm or corporation determined by the arborist to be in violation of any provision of this ordinance shall be fined fifty dollars (\$50) for each offense, and in addition thereto may be enjoined from continuing the violation and ordered to remediate such violation. Each tree cut, damaged or poisoned shall constitute a separate offense.

Removal or damage of any specimen tree(s) from within the city limits, including specimen trees located on owner occupied single family or duplex lot, without a tree removal permit issued by the city shall constitute a violation of this ordinance. Each tree removed or damaged shall constitute a separate offense. Each specimen tree removed without a city-issued permit shall be replaced with tree(s) equal to twice the density unit value of the removed tree, contributions made to the Lakeland Tree Bank as detailed in Appendix B<sup>1</sup> of this chapter, or a combination of the two. In all cases, the replacement, contribution to the tree bank, or combination thereof shall equate to a total density unit value equal to twice the density unit value of the removed specimen tree(s). Replacement trees shall be planted in accordance with the guidelines set forth in § 13-414 (Tree replacement plan) of this ordinance.

Any tree designated for retention within the approved tree survey, tree management plan, or tree replacement plan that is removed, damaged, or poisoned shall be replaced with tree(s) of equal density unit value, contributions made to the Lakeland Tree Bank as detailed in Appendix B<sup>1</sup> of this chapter, or a combination of the two. In all cases, an attempt shall be made to replace as many trees as possible on the site within the appropriate spacing limitations detailed in the referenced standards of this chapter. (as added by Ord. #04-73, Dec. 2004)

**13-434. Provisions for violation mitigation.** Any person, firm, or corporation determined by the arborist to be in violation of any provision of this ordinance shall be issued a notice of such violation. This notice shall include in plain language the nature of the violation and the conditions, if any, required to remedy the violation as well as a time frame for compliance. The notice shall be sent by registered or certified United States Mail, addressed to the last known address of record of the alleged violator/responsible party. The notice

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<sup>1</sup>Appendix B is provided at the end of this chapter.

shall state that the responsible party is entitled to a hearing and shall contain at a minimum, the following information:

(1) A brief statement that the responsible party is in violation of the Lakeland Municipal Code, which has been enacted under the authority of Tennessee Code Annotated, § 6-19-101, and that the violation may be remedied at the expense of the responsible party and a lien placed against the property to secure the cost of mitigation of the violation;

(2) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and

(3) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.

If the property owner of record fails or refuses to remedy the condition within the time frame specified by the notice, the city shall cause the condition to be remedied at a cost in conformity with reasonable standards and the cost thereof shall be assessed against the owner of the property and/or prosecution in a court of competent jurisdiction. Upon filing of the notice with the office of the register of deeds in Shelby County, the mitigation costs incurred by the city shall be a lien on the property in favor of the municipality, second only to liens of the state, county, and municipality for taxes, any lien of municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. (as added by Ord. #04-73, Dec. 2004)

**13-435. Delay or failure to enforce.** Delay or failure to enforce any portion of this ordinance does not constitute a waiver of the provisions of the ordinance in favor of any party or violation. (as added by Ord. #04-73, Dec. 2004)

**13-436. Interference with city natural resources board.** It shall be unlawful for any person to prevent, delay or interfere with the city natural resources board, or any of its agents, while engaging in or about the planting, cultivating, mulching, pruning, spraying, or removing of any municipal trees, or trees on private grounds, as authorized by this ordinance. (as added by Ord. #04-73, Dec. 2004, and amended by Ord. #05-81, Sept. 2005)

**13-437. Severability.** If any section, clause, provision, or portion of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole which other provisions shall remain in full force and effect, or any part thereof, other than the part so declared to be invalid. (as added by Ord. #04-73, Dec. 2004)

**13-438. Provisions of federal and state law excepted.** No provision of this ordinance shall contravene by term or application any existing or later enacted statute or regulation of the federal or state governments, and in the event of said conflict, the provisions of the state and/or federal regulations shall control. (as added by Ord. #04-73, Dec. 2004)

## APPENDIX A DENSITY FACTOR ANALYSIS

A basic condition of the Lakeland Tree Management Ordinance is that all applicable sites maintain a minimum tree density of twenty (20) units per acre. The term "unit" is an expression of basal area and is not synonymous with "tree." The density requirement must be met whether or not a site had trees prior to development. The density may be achieved by counting existing trees to be preserved, planting new trees, or some combination of the two. For density factor analysis, the following formula shall apply:

$$\text{SDF} = \text{EDF} + \text{RDF}$$

Where:

SDF (Site Density Factor) = The minimum tree density required to be maintained on an applicable site (20 units per acre).

EDF (Existing Density Factor) = Density of existing trees to be preserved on a site.

RDF (Replacement Density Factor) = Density of new trees to be planted on a site.

### PROCEDURE FOR CALCULATING THE REQUIRED TREE REPLACEMENT:

Step 1. Calculate the Site Density Favor (SDF):

The SDF is calculated by multiplying the number of site acres by 20.

EXAMPLE: A 2.2 acre site has a SDF of  $2.2 \times 20 = 44$

Step 2. Calculate the Existing Density Factor (EDF):

The Existing Density Factor, EDF, is determined by converting the diameter breast height (dbh) of individual trees to density factor units as shown in the following Table 1. These units are totaled to determine the EDF for the site.

EXAMPLE: A total of 8 trees will remain on the 2.2 acre site in Step 1. These trees include:

3 - 14" elm; 3 - 18" oaks; 1 - 20" hickory; 1 - 30" oak

When converted to density factor units using Table 1, we arrive at the following values:

Dbh	Units X Number of Trees
14"	$3.1 \times 3 = 9.3$
18"	$3.8 \times 3 = 11.4$
20"	$4.2 \times 1 = 4.2$
30"	$6.9 \times 1 = 6.9$
Total Units:	31.8

The total units, 31.8, is the EDF (Existing Density Factor).

Step 3. Calculate the Replacement Density Factor (RDF):

Replacement Density Factor (RDF) is determined by subtracting the EDF from the SDF.

EXAMPLE:  $44 \text{ (SDF)} - 31.8 \text{ (EDF)} = 12.2$

This means that 12.2 tree units are required as replacements for the total site to meet the requirement of 20 units per acre. The Density Factor credit for each caliper size of replacement (new) trees is shown in the following Table 2.

**TABLE 1. CONVERTING EXISTING TREE DIAMETERS TO DENSITY UNITS**

<b>DBH</b>	<b>UNITS (hardwood)</b>	<b>UNITS (softwood)</b>	<b>DBH</b>	<b>UNITS (hardwood)</b>	<b>UNITS (softwood)</b>
			30	6.9	5.2
6-7	2.3	1.7	31	8.2	6.2
8-9	2.5	1.9	32	8.6	6.5
10	2.6	2.0	33	8.9	6.7
11	2.7	2.0	34	9.3	7.0
12	2.8	2.1	35	9.7	7.3
13	2.9	2.2	36	10.1	7.6
14	3.1	2.3	37	10.5	7.9
15	3.2	2.4	38	10.9	8.2
16	3.4	2.6	39	11.3	8.5
17	3.6	2.7	40	11.7	8.8
18	3.8	2.9	41	12.2	9.2
19	4.0	3.0	42	12.6	9.5
20	4.2	3.2	43	13.1	9.8
21	4.4	3.3	44	13.6	10.2
22	4.6	3.5	45	14.0	10.5
23	4.9	3.7	46	14.5	10.9
24	5.1	3.8	47	15.0	11.3
25	5.4	4.0	48	15.6	11.7
26	5.7	4.3	49	16.1	12.1
27	6.0	4.5	50	16.6	12.5
28	6.3	4.7	51+	20	15.0
29	6.6	5.0			

**TABLE 2. CONVERTING REPLACEMENT TREES TO DENSITY UNITS**

<b>CALIPER</b>	<b>UNITS (hardwood)</b>	<b>UNITS (softwood)</b>	<b>CALIPER</b>	<b>UNITS (hardwood)</b>	<b>UNITS (softwood)</b>
1"	.4	.3	8"	2.3	1.7
2"	.8	.6	9"	2.5	1.9
3"	1.6	1.2	10"	2.7	2.0
4"	1.7	1.3	11"	2.9	2.2
5"	1.9	1.4	12"	3.1	2.3
6"	2.0	1.5	13"	3.3	2.5
7"	2.2	1.6	14"+	3.5	2.6

A seven (7) gallon container grown pine tree is given replacement credit of .2 units. For tree relocation, replacement units will be granted to trees relocated on site. Tree relocation is subject to arborist approval.

## APPENDIX B - TREE BANK FORMULA

### CITY OF LAKELAND TREE BANK FORMULA FOR DETERMINING CONTRIBUTIONS

Contribution calculations are based on two (2) inch caliper replacement trees with a value updated semi-annually, and on file in the city, representing the average size and cost of materials, labor and guarantee for trees planted in the City of Lakeland area.

**Example:** Based on unit value of tree replacement of \$220.00 (amount subject to change). To determine the appropriate contribution, first calculate the Density Factor Deficiency (DFD) or unit value which cannot be planted on the site. Divide the DFD by .8 (the unit value of a 2" caliper hardwood replacement tree) and multiply by \$220.00.

**Example:** A 2.2 acre site will have a required Site Density Factor of 44.0 units ( $2.2 \times 20 = 44$ ). The site has existing trees totaling 21.4 units (Existing Density Factor). Due to space limitation, the site can only bear 19.0 units as replacement trees.

Determine the DFD using the formula:

$$\text{DFD} = \text{SFD} - \text{EDF} - \text{Approved RDF}$$

In this example  $\text{DFD} = 44.0 - 21.4 - 19.0 = 3.6$  units

This means that a total of 3.6 units of trees are to be planted at a remote site as a form or alternative compliance OR the developer may elect to contribute to the City of Lakeland Tree Bank the value of 3.6 units.

Determine the acceptable contribution amount as follows:

$$\text{Divide } 3.6 \text{ by } .8 = 4.5$$

$$4.5 \times \$220.00 = \$990.00 \text{ TOTAL CONTRIBUTION TO TREE BANK.}$$

## APPENDIX C - TREE REMOVAL IMPACT FORMULA

Contribution calculations are based on two (2) inch caliper replacement trees with a value updated semi-annually, and on file with the City, representing the average size and cost of materials, labor and guarantee for trees planted in The City of Lakeland are. The provisions of this formula are based on the premise that the most significant adverse environmental impact to the City stemming from tree removal in association with development is the loss of canopy and its associated and documented benefits. This canopy is generally best represented in the Lakeland area by trees 16"-dbh and greater. Trees smaller than 16"-dbh do not generally comprise a major component of the forest overstory in the Lakeland area and therefore do not constitute a major component of the forest canopy. However, the premise stated above is not intended to discourage the retention of trees with dbh's of less than 16" but rather to encourage the retention of trees 16"-dbh and greater.

**Example:** Based on unit value of tree replacement of \$220.00 (amount subject to change) To determine the appropriate fee, first calculate the Pre-Development Density (PDD-16) for all trees 16 inches dbh and greater. Subtract from this the density unit value of the trees 6"dbh and greater to be retained on the site, Existing Density Factor (EDF) and the density unit value of all replacement trees according to the approved Tree Replacement Plan, Replacement Density Factor (RDF). The result of this equation is the Removal Impact Factor (RIF). Divide the RIF by .8 (the unit value of a 2" caliper hardwood replacement tree) and multiply by \$220.00.

**Example:** A 40-acre development site contains a hardwood forest component with 6 trees/acre that are 16"dbh and greater. The density unit value for each of these 240 trees is tallied, utilizing Table 1 in Appendix A, to calculate the Pre-Development Density (PDD-16) of 1008 density units.  
 The approved development design retains 180 trees whose density unit values, the Existing Density Factor (EDF) add to a total of 608.  
 The Approved Tree Replacement Plan provides for a replanting of 120 - 3" caliper trees for a Replacement Density Factor of 192 density units (120 X 1.6).  
 Determine the RIF using the formula:  $RIF = (PDD-16) - (EDF) - (Approved RDF)$   
 In this example  $RIF = 1008 - 608 - 192 = 208$  units  
 This means that a total impact fee for the mitigation of 208 units of trees are to be provided by the developer to the City of Lakeland

Tree Bank to be used for planting and maintenance of trees on public property.

Determine the appropriate impact fee amount as follows:

Divide 208 by .8 = 260

260 x \$220.00 = \$57,200 TOTAL IMPACT FEE DEPOSITED IN TREE BANK